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In re Application of	:	
BEKANICH et al.	:	
U.S. Application No.: 10/527,092	:	DECISION ON PETITION
PCT No.: PCT/US04/23518	:	UNDER 37 CFR 1.47(a)
Int. Filing Date: 23 July 2004	:	
Priority Date: 23 July 2003	:	
Attorney Docket No.: B6225.0001/P0001	:	
For: AIRTIME CONTACT MANAGER	:	

This decision is in response to applicants' "Petition under 37 CFR 1.47(a)" filed 07 November 2005 to accept the application without the signature of joint inventor, Joseph A. Bekanich.

BACKGROUND

On 23 July 2004, applicants filed international application PCT/US04/23518 which claimed a priority date of 23 July 2003. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 23 January 2006.

On 09 March 2005, applicants filed a transmittal letter for entry into the national stage in the United States, which accompanied by, inter alia: the requisite basic national fee as required by 35 U.S.C. 371(c)(1); a copy of the international application; and an information disclosure statement.

On 29 July 2005, applicant was mailed a "Notification of Missing Requirements under 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 07 November 2005, applicants filed the present petition under 37 CFR 1.47(a).

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(h), (2) factual proof that the missing joint inventor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the

missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the non-signing joint inventor. Items (1) and (3) have been satisfied.

Regarding item (2) above, petitioner states that Joseph A. Beganich has refused to sign the application. Section 409.03(d) of the Manual of Patent Examining Procedure (M.P.E.P.), **Proof of Unavailability or Refusal**, states, in part:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Proof that a bona fide attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the nonsigning inventor for signature, but the inventor refused to accept delivery of the papers or expressly stated that the application papers should not be sent, may be sufficient. When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts. The document may be redacted to remove material not related to the inventor's reasons for refusal.

When it is concluded by the 37 CFR 1.47 applicant that a nonsigning inventor's conduct constitutes a refusal, all facts upon which that conclusion is based should be stated in the statement of facts in support of the petition or directly in the petition. If there is documentary evidence to support facts alleged in the petition or in any statement of facts, such evidence should be submitted. Whenever a nonsigning inventor gives a reason for refusing to sign the application oath or declaration, that reason should be stated in the petition.

A review of the present petition reveals that petitioner has not shown that a bona fide attempt was made to present the application papers (specification, claims, drawings, and oath/declaration) to Joseph A. Beganich. Bradley J. Olsen states that a copy of the Declaration/Power of Attorney and Assignment were sent to Mr. Beganich on September 16, 2005, but the envelope was returned as unclaimed. The mailing of the Declaration and Assignment is not considered a complete copy of the application. As stated above, where a refusal of the inventor to sign the application papers is alleged, a statement of facts is needed from a person having first hand knowledge of the facts that a complete copy of the application papers (specification, claims, drawings, and oath/declaration) were sent to Joseph A. Beganich, and when such papers were sent. In addition, copies of documentary evidence such as a certified mail return receipt, cover letter of instruction, telegrams, etc.,

should be supplied with the declaration.

Counsel is reminded that pursuant to MPEP 409.03(d), the complete application should be mailed to the last known address of the non-signing inventor or if the nonsigning inventor is represented by counsel, to the address of the non-signing inventor's attorney.

As to item (4), an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and behalf of the nonsigning joint inventor has been included with the present petition. However, the declaration submitted is not in compliance with 37 CFR 1.497(a)(3) which requires that the oath or declaration identify the inventor and country of citizenship of the inventor. In this case, the declaration does not include the citizenship of the fourth inventor (Jerry Fenzel). Since the declaration does not clearly identify the citizenship of the inventor, it is considered defective under 37 CFR 1.497(a)(3) and 37 CFR 1.63(c)(1).

For the reasons stated above, it would not be appropriate to accept the application without the signature of Joseph A. Bekanich under 37 CFR 1.47(a) at this time.

CONCLUSION

The petition under 37 CFR 1.47(a) is DISMISSED without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." No additional petition fee is required.

Any further correspondence with respect to this matter should be addressed to:
Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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